

**DECISION**



29340  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-212779.2

**DATE:** September 18, 1984

**MATTER OF:** Intercomp Company

**DIGEST:**

1. Protest of solicitation cancellation must be filed within 10 days of when protester learns of basis to object to cancellation.
2. Request for proposals requiring mechanical-hydraulic wheel-load scales is not unduly restrictive of competition even though it effectively limited competition to a single source where requirement is dictated by agency's minimum needs for scales that would be subject to rough handling and used in remote areas.
3. Use of negotiated method of procurement is proper where agency has reasonable basis for believing that equipment to be furnished likely could be supplied by only one firm.

Intercomp Company protests the cancellation of invitation for bids (IFB) No. DLA400-83-B-1565, for wheel-load scales, by the Defense General Supply Center (DGSC), Defense Logistics Agency, and award of a contract to General Electro Dynamics Corporation (GED) under request for proposals (RFP) No. DLA400-84-R-0532, issued by DGSC for mechanical-hydraulic wheel-load scales. We deny the protest.

IFB -1565 was issued by DGSC on February 16, 1983, for wheel-load scales in accordance with a purchase description which was included in the solicitation. These scales are used in remote areas to weigh military cargo and vehicles prior to loading them on aircraft so that the correct center of gravity in the aircraft during flight can be achieved. Bid opening was originally set for March 18, but it was delayed twice because of deficiencies in the purchase description. Bids were finally opened on July 12 and Intercomp submitted the lowest of the six bids received.

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The Defense Contract Administration Services Management Area (DCASMA) branch office in St. Paul, Minnesota conducted a preaward survey of Intercomp and recommended award of the contract to that firm. The survey indicated that Intercomp intended to supply an electro-mechanical scale with a battery-operated liquid crystal display digital readout. The contracting officer subsequently asked the Directorate of Technical Operations, DGSC, about the acceptability of such a scale under the solicitation's purchase description and about the adequacy of the purchase description itself. The Directorate responded that although an electro-mechanical scale was not precluded by the purchase description, it was inadequate for the government's needs because the scale, to be used in remote areas under rugged conditions, cannot withstand rough treatment as well as a mechanical-hydraulic scale and would also create logistical problems because it would require the maintaining of an adequate supply of batteries. The contracting officer consequently decided to cancel the solicitation "due to the inadequacy of the specifications cited and revision of technical requirements" and so informed Intercomp by letter of October 5.

On November 10, DGSC issued RFP -0532, with a revised purchase description which required the scales to be of a mechanical-hydraulic design. The revised purchase description was prepared by the San Antonio Air Logistics Center, the designated engineering support activity, which determined that the possibility of an electrical or power source failure in the remote areas in which these scales are to be deployed rendered an electro-mechanical scale unacceptable. Award has been made to GED, which was the only offeror to respond to the RFP.

Intercomp's basic contention is that the specifications in the solicitation should not preclude electronic scales, which is the type of scale it manufactures. The protester also questions the decision to cancel the IFB and to use negotiation procedures with the revised purchase description.

Intercomp first argues that the cancellation of IFB -1565 was improper because bids were exposed and it put firms to the needless expense involved in preparing those bids. This contention, however, appears to be untimely. Our Bid Protest Procedures provide that a protest must be filed within 10 working days after the basis for the protest is known to the protester. 4 C.F.R. § 21.2(b)(2) (1984). Intercomp, however, did not file its protest until

November 25, more than 7 weeks after the firm was informed of the cancellation and the reasons for it. In any event, the critical question in determining the propriety of the cancellation is whether there was a compelling reason justifying it, specifically whether the IFB specifications were defective in that they were so broadly drawn that they permitted bidders to offer a type of scale which did not satisfy the government's minimum needs. In view of our discussion below in which we conclude that the protester has not shown the agency to lack a reasonable basis for restricting its procurement to mechanical-hydraulic scales, we have no basis on which to object to the cancellation.

Intercomp argues that by requiring mechanical-hydraulic scales, the agency conducted a sole source procurement with GED, and that this restriction is not necessary because the agency's minimum needs could be met by producers of comparable products. It claims, for example, that the preaward survey of its firm for the initial solicitation included an examination of its electronic scale and that DCASMA found the scale adequate for the government's minimum needs and in some ways superior to the hydraulic scales.

The contracting agency has the primary responsibility for the determination of the needs of the government and the methods of accommodating such needs. Williams Electric Co., Inc., B-212987 et al., Feb. 27, 1984, 84-1 CPD ¶ 236. Government procurement officials who are familiar with the conditions under which supplies, equipment or services have been used in the past, and how they are to be used in the future, are generally in the best position to know the government's actual needs and therefore are best able to draft specifications. Memorex Corporation, B-212660, Feb. 7, 1984, 84-1 ¶ 153. If the government's needs can only be satisfied by a single source, the law does not require that those needs be compromised.

The agency's requirement for the mechanical-hydraulic design has not been shown to be unreasonable. The agency established a need for this particular design because of the conditions likely to be found in remote areas where the scales are to be used. The protester has not presented any evidence rebutting the agency's determination that it needs a scale which will not be susceptible to power failure and which will be able to withstand rough treatment, nor has it introduced any evidence to demonstrate that an electronic scale is not subject to these anticipated problems.

The only evidence presented by Intercomp relating to the government's minimum needs concerns the preaward survey for the IFB and past failures of mechanical-hydraulic scales supplied by GED. The preaward survey team did express the opinion that the electronic scale is better than the mechanical-hydraulic scale with regard to leakage and performance in low temperatures, but these features are not related to the government's minimum needs with respect to remote area use. Furthermore, contrary to Intercomp's assertion, DCASMA did not reach any conclusion about Intercomp's electronic scale meeting the minimum needs of the government; the survey report only states that such a scale was acceptable under the purchase description in the IFB. Also, DCASMA is concerned with determining a firm's responsibility, not with determining the agency's minimum needs, and therefore even if DCASMA made any favorable comments about Intercomp's product, these comments would not relate to the reasons which led DGSC to specify a mechanical-hydraulic design.

Accordingly, we find the agency's needs for a reliable scale to be used in remote areas justifies the specification requirement for a mechanical-hydraulic design. See Med-E-Jet Corp., B-210029, B-210447, Sept. 2, 1983, 83-2 CPD ¶ 293.

Intercomp also challenges the use of negotiated procurement procedures rather than the use of formal advertising. The lack of adequate specifications could not have been the justification for negotiating this contract, Intercomp asserts, because DGSC in fact used specifications in the RFP which described what it wanted and which would have permitted competition. As evidence, Intercomp points out that these specifications are virtually identical to those which were in the canceled IFB and there was adequate competition in response to the prior solicitation. Intercomp further contends that negotiation cannot be justified as a "sole-source" procurement because DGSC has not shown that only one source is capable of supplying the scales.

DGSC explains that negotiation was necessary because it was uncertain whether there would be any meaningful competition. It states that prior to the development of a purchase description, these scales had been purchased on a sole-source basis from GED and that with the revision to the purchase description it believed that only GED could meet the government's minimum needs. The agency adds that even though it expected that only one firm could supply the

desired product, it did attempt to obtain competition on this procurement by publishing a synopsis of the procurement in the Commerce Business Daily (CBD) and mailing the RFP to 23 firms, including Intercomp, but, as expected, only GED responded.

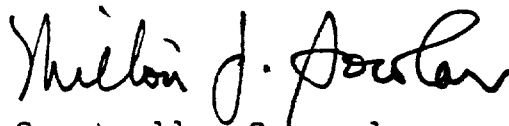
10 U.S.C. § 2304(a) provides that purchases and contracts "shall be made by formal advertising in all cases in which the use of such method is feasible and practicable under the existing conditions and circumstances." If advertising is not feasible and practicable, a determination and findings (D&F) may be executed authorizing procurement by negotiation, providing that the circumstances described in one of 17 exceptions are applicable. The contracting officer, citing 10 U.S.C. § 2304(a)(10), which provides for negotiation where the purchase or contract is for property or services for which it is impracticable to obtain competition, executed a D&F stating that negotiation was necessary because "of uncertainty in obtaining competition."

Obviously, DGSC did not use negotiation here because of the difficulty in drafting adequate specifications, as suggested by the protester, but rather because it anticipated that only one offer would be received. We think this action was proper here. We have stated that where only one firm is believed to be capable of providing the solicited item, it is in the government's best interest to use negotiation procedures in order to ensure a reasonable contract price. See Kewaunee Scientific Equipment Corporation, B-181377, Aug. 21, 1974, 74-2 CPD ¶ 114. The record indicates that DGSC had a reasonable basis, in light of its experience and prior procurements, for its belief that only GED would be capable of supplying mechanical-hydraulic scales. This expectation was proven correct, of course, when only GED responded to the solicitation.

The protester has not introduced any evidence which demonstrates that it or any firm other than GED is capable of supplying this type of scale. Since the agency had a reasonable basis for determining that there was only one firm capable of supplying this item and that as a consequence it was impracticable to obtain competition, it had a reasonable basis for conducting a negotiated procurement. See Self-Powered Lighting, Ltd., 59 Comp. Gen. 298 (1980), 80-1 CPD ¶ 195; Greenfield Tap & Die Division of TRW, Inc., B-195569, Dec. 7, 1979, 79-2 CPD ¶ 398.

Finally, Intercomp maintains that an award should not have been made to GED because in some instances GED scales have not functioned properly. In support of this contention, Intercomp has provided five Material Deficiency Reports submitted over a 1-year period in which users reported problems encountered with GED's scales. We agree with the agency that this argument does not relate so much to the specification requirement for mechanical-hydraulic scales as it does to GED's responsibility--its ability to perform as required under this contract. We note that where an affirmative determination of responsibility is made, our Office will not review the agency's determination unless definitive criteria of responsibility allegedly have not been applied or there is a showing of possible fraud or bad faith on the part of the contracting officer, Glenn T. Anderson, Inc., B-213585, Nov. 23, 1983, 83-2 CPD ¶ 613, and neither of these exceptions is present here.

The protest is denied.

*for*   
Comptroller General  
of the United States